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## SECONDARY EDUCATION IN THE UNITED STATES<sup>1</sup>

### AN HISTORICAL SKETCH

#### III. THE HIGH-SCHOOL PERIOD—*Continued*

WE have seen the high-school movement in its beginnings. It is plain that this movement is different from any that had preceded it. The current of American practice in the matter of secondary education was turned into a new channel. So decisive a change calls for further consideration.

We shall find that this new development is not an isolated thing; but like other new educational institutions, the high school arose in response to new social conditions, which influenced our education profoundly, and were influenced by the schools in turn. The academies prepared the way for the high schools. What is more important, American society during the academy period was undergoing those changes which created the demand for high schools. Still further, it will appear that the same influences which produced the high schools brought about other and momentous changes in our systems of public instruction. Some of the most marked educational developments growing out of the new order of things, appeared in the domain of higher education. We shall better understand the change in secondary schools if we first take note of changes affecting the higher institutions; and particularly of the movement toward some sort of public control of those institutions.

From the earliest times, university organization has tended toward some form of administration which should secure freedom from interference in the discharge of educational functions. The prevalent form of organization which grew up with our early colleges was that which places the institution under the control of a self-perpetuating board of trustees, incorporated by

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the government.<sup>1</sup> This is the type of organization commonly found in the American academies. In the earlier times it was subject to many modifications. It was no uncommon thing for the colonies or the succeeding states to extend aid, either in money or in lands, to educational institutions managed by such close corporations. But within the first half century following the Revolutionary War there appeared a growing dissatisfaction with this system. The people sought to exercise some more direct control over institutions of learning, through the organs of government.

Even in colonial times this disposition may be seen; though in the most of the colonies ecclesiastical and governmental interests were so closely bound together that the direct exercise of governmental agency in educational affairs meant something very different from that state control which has grown up with the nineteenth century.

When Yale College, after long delay, was finally incorporated, in 1745, the corporation was made to consist of the president of the college and ten ministers, who should constitute a self-perpetuating body under the name of "The President and Fellows of Yale College in New Haven." Previous to this time and for nine or ten years thereafter the college received annual grants from the colonial legislature. Then various causes tended to produce alienation between the college and the government.

<sup>1</sup> "Visitable corporations in England are constituted in a very different manner. Trustees are not appointed who have no *beneficial* interest in the property, but the master and scholars are made a body politic; those who enjoy the benefit of the charity or donation are the corporation, and have in the first instance the management and government of it."—From the opinion of Chief Justice Smith (1807), cited in the brief for the Trustees of Phillips Academy. *The Trustees of Phillips Academy vs. Andrew J. Waterman*.

The claim of the resident fellows of Harvard College in 1722 and again in 1824 to a place on the corporation of that institution pointed in the direction of the English system. The title of the corporation, "President and Fellows of Harvard College," seems to follow the analogy of that system. The memorial of the corporation presented to the general court in 1722 declared, with reference to the constitution of their own body, "that *the resident tutors should never be able to make a major part*, because we think it contrary to the light of nature, that any should have an overruling voice in making those laws, by which themselves must be governed in their office-work, and for which they receive salaries."—PEIRCE. *A history of Harvard University*, p. 116.

Chief among these was the rigid ecclesiastical character and militant orthodoxy of the college. The conflict between the "New Lights" and the "Old Lights" in Connecticut drew upon the college increasingly hostile criticism. In 1763 a memorial was presented to the general assembly, praying that a committee of visitation be appointed "to inquire into and rectify the abuses in the college." This was the culmination of a hot discussion which had disturbed the colony for several years. It was held by leading lawyers that the general assembly was the founder of the college, and so had, according to English precedents, the right of visitation. President Clap prepared a counter-memorial for the college, maintaining that the first trustees and donors were the true founders, and that their right of visitation had passed under the charter to the president and fellows. This view of the case seems to have prevailed, for the legislature took no action in the matter.

During the Revolution and within a few years after its close, an effort was made to improve the relations of the college to the commonwealth. It was said of President Stiles that he "brought back the college to its historic place, in harmony with the legislature and all classes of people in the state." What was accomplished at this time, however, was not a return to the former relations, but a notable change in the constitution of the college. The change was only brought about after a long and bitter contest. The governor of the state proposed that a number of civilians be added to the managing board, as a condition to the renewal of public grants. To this the corporation refused to agree. In 1784 the opponents of the college proposed that the legislature either establish a rival college or proceed to alter the charter of Yale, but this proposal came to nothing. Finally, it was agreed, in 1792, that eight of the chief officers of state should be added, *ex officio*, to the college corporation; and the legislature granted to the college the arrearages of certain state taxes, which amounted to something more than forty thousand dollars. After this no important change was made in the constitution of the board until 1869, when the state relinquished six of the eight places occupied by its representatives in the

board. The six places have since been filled by representatives elected by the alumni of five years' standing; while the governor and the lieutenant governor of the state are still members *ex officio*.<sup>1</sup>

During the Revolutionary War the general assembly of Pennsylvania instituted an inquiry into the affairs of the College of Philadelphia. Doubtless many personal and local considerations lent animus to this movement: but the grounds of dissatisfaction alleged by the legislative committee of inquiry were the provision of the college charter requiring the trustees to take an oath of allegiance to the king of Great Britain; evidences of hostility to the government and constitution of the State of Pennsylvania on the part of "divers of the late trustees of the said college;" and "that your committee also have sufficient reason to believe that the fair and original plan of equal privileges to all denominations hath not been fully adhered to." The college charter was accordingly revoked by the legislature in 1779, and the "powers, authorities, and estates" of the institution were vested in a new corporation, the Trustees of the University of the State of Pennsylvania. This new body was composed of three classes of members: Six of the highest officials of the state government *ex officio*; the "senior minister in standing" in each of six religious denominations in the city of Philadelphia; and thirteen citizens individually named in the charter. Vacancies in the last named class were to be filled by vote of the remaining trustees, but their choice might be disallowed by the house of assembly within six months. The new university was thus placed under the virtual control of the people of Pennsylvania as exercised through the organs of the state government, and so much of ecclesiastical influence in the management as the new charter provided was distributed among the leading Christian denominations.<sup>2</sup>

<sup>1</sup> Cf. STEINER, *The history of education in Connecticut*, ch. v, secs. 1, 2, 3, 4, and 7.

<sup>2</sup> This bringing together of political and ecclesiastical members with others chosen by coöptation may very likely have been in imitation of the royal charter granted to King's College in 1754. See MOORE, *An historical sketch of Columbia College*, p. 22.

Ten years later the older corporation was revived, and for two years the college and the university existed, at least in name, side by side, as rival establishments. Then, in 1791, by agreement of the two boards of trustees, they were both merged into one institution, known to this day as the University of Pennsylvania. The board of trustees, twenty-five in number, is a self-perpetuating body, with the single exception that its president is the governor of Pennsylvania *ex officio*.<sup>1</sup>

When the effort was making in the middle of the eighteenth century to effect the establishment of King's (later Columbia) College, it met with determined opposition, led by Mr. William Livingston. It was Mr. Livingston's contention that the college should be established, not by charter, but by an act of the colonial legislature. He advocated "constituting a college on a basis the most catholic, generous, and free." "The opposition to the chartered college," says Mr. Moore, "claimed to stand upon the broad ground of resistance against the connection of a seminary of learning with any religious society whatever, but it was no doubt greatly animated, if not wholly occasioned, by a zealous dread of the Church of England in particular, and apprehensions of encroachment from that quarter on the religious freedom which the colonies enjoyed."<sup>2</sup> This opposition was, however, overcome, and a royal charter was secured in 1754. This charter named as governors of the college, the Archbishop of Canterbury and the first Lord Commissioner for trade and plantations, several of the highest civil officials of the colony, the mayor of the city of New York, the rector of Trinity Church, ministers representing four other Protestant denominations, and the president of the college, all *ex officio*; and twenty-four citizens of New York, named in the instrument, this number presumably to be kept up by a process of coöptation.<sup>3</sup> During the Revolution the college was greatly in disfavor, and its Tory president, Dr. Cooper, was obliged to flee for his life. For a time instruction

<sup>1</sup> The text of several important documents relating to the history of the University of Pennsylvania may be found in THORPE, *Benjamin Franklin and the University of Pennsylvania*, chap. 1. Extended quotations from the documents appear in the *Catalogue* of the University for 1899-1900, pp. 11-17.

<sup>2</sup> *Op. cit.*, p. 15.

<sup>3</sup> *Idem.*, p. 22.

was wholly discontinued. In 1784 a movement began in the state legislature "for the establishment of seminaries of learning and schools for the education of youth." The friends of the college took this occasion to present to the legislature a petition for the rehabilitation of that institution, with such revision of its charter as would fit it to be the head of the proposed state system of education. This petition represented that parts of the college charter were "inconsistent with that liberality and that civil and religious freedom which our present happy constitution points out." The combined outcome of this legislative movement and this petition from the college was the University of the State of New York. In the form given to that institution by the legislation of 1784, the board of regents was a most unwieldy body, consisting of six leading state officials and the mayors of New York and Albany, *ex officio*; representatives of the several counties of the state, appointed by the governor with the approval of the council of appointment; representatives of the several religious denominations of the state, chosen by the clergy of the respective denominations; and representatives of the founders of any colleges or schools admitted to the university. Moreover, the fellows, professors, and tutors of the several colleges were made "regents of the said university, *ex officio*, and capable of voting in every case relative only to the respective college to which they shall belong, excepting in such cases wherein they shall respectively be personally concerned or interested." Nine members were to constitute a quorum of this composite body—a provision which made it easy for Columbia College to control the board, since its large representation in the New York City contingent could be easily assembled at the place of meeting, while the country members could be got together only with extreme difficulty. This board was virtually a board of trustees of Columbia College, but it was also "empowered to found schools and colleges in any part of this state, . . . every such school or college being at all times to be deemed a part of the university."

The fear of undue ecclesiastical influence was apparently set at rest by the provision that professors should not be subjected to any religious test; but the country members of the

board and of the legislature distrusted the college and desired to further the interests of the academies. Nor was the new arrangement satisfactory to the friends of the college, who could not be sure that the interests of that institution would be steadily and intelligently provided for by a board so constituted. Different schemes of reform were proposed, and the legislation of 1787 was adopted as a compromise measure. This provided that no "trustee, president, principal, tutor, fellow, or other officer of any college or academy, [shall] be a regent of the university." The board of regents was to be composed of twenty-one members, two of whom, the governor and lieutenant governor, should be regents *ex officio*, the remaining members being elected by the legislature. Columbia College was given a self-perpetuating board of trustees, of twenty-nine—later twenty-four—members.<sup>1</sup>

Harvard college seems to have been at the outset subject to the direct control of the general court of Massachusetts Bay colony. In 1642 this control was delegated to a board of overseers consisting of the president of the college together with certain civil and ecclesiastical dignitaries, all holding their membership in the board *ex officio*. This board was "accountable" to the general court. In 1650 the general court granted a college charter, which erected a corporation, consisting of the president and the treasurer of the college and five "fellows," who were to constitute a self-perpetuating body, the acts of which should be subject to the approval of the overseers. This general form of organization has continued to the present day; but it has passed through many conflicts and vicissitudes, which have resulted in important changes in the constitution of the board of overseers and in the relations of the several parts of the system one to another. Passing over the checkered colonial history of the institution, we may note that the state constitution adopted in 1780 provided for the continuance of the college under this form of government, with only such interpretation of the earlier acts as was necessary to adjust them to the new political order. It was expressly provided in this instrument, "that

<sup>1</sup> Cf. SHERWOOD, *University of the State of New York*, chapter II. MOORE, *Op. cit.*



nothing herein shall be construed to prevent the legislature of this commonwealth from making such alterations in the government of the said University, as shall be conducive to its advantage and the interest of the republic of letters, in as full a manner, as might have been done by the legislature of the late province of Massachusetts Bay."

In 1810 the legislature passed an act making a great change in the board of overseers. The board as now constituted was to consist, in addition to the president of the college and certain state officials, *ex officio*, of fifteen ministers chosen from the Congregational churches and fifteen laymen. This act was not to go into effect until it had been approved by both of the college boards. It was so approved, however, and a new board of overseers was constituted accordingly. In 1812 the legislature repealed this act, without reference to the approval of the college boards. The boards held that their approval was necessary to the validity of the act. In 1814 the act of 1812 was in its turn set aside by the legislature, and the act of 1810 confirmed with some modification. This act of 1814 distinctly provided that the approval of the college boards should be necessary to its validity; and such approval was in fact promptly secured. The Massachusetts constitutional convention of 1820-1 proposed to declare the board of overseers free to elect to membership in their body "ministers of churches of any particular denomination of Christians;" but the proposal was rejected by the people. In 1843, however, this change was brought about. Finally, in 1865, the right of the state government to representation in the board of overseers was given up entirely, and that board, with the exception of the president and treasurer of the college, who are members *ex officio*, became representative of the college alumni of five years' standing.<sup>1</sup>

These occurrences in several of our chief institutions of learning may be variously interpreted. They seem to represent a slow and painful readjustment of those institutions to the great changes in political and social conditions which appeared

<sup>1</sup> Cf. BUSH, *History of higher education in Massachusetts*, chapters II-IV. Some of the more important documents referred to are presented in the appendices to PEIRCE, *A history of Harvard University*.

in the latter half of the eighteenth and earlier part of the nineteenth century. The dominant influences of the earlier colonial times were ecclesiastical, and the colleges of that time were largely, though not exclusively, seminaries for the training of ministers. In the most of the colonies there was more or less of direct connection between governmental and ecclesiastical affairs. Perhaps it would be fair to say that this was not so much in the nature of an alliance between two sharply distinguished institutions as it was a blending of these two great human interests, between which very few as yet drew any clear line of demarcation. In education as in other affairs the two agencies, civil and ecclesiastical, were intimately bound together. To increase the confusion which meets the student of these times, private initiative in a variety of forms is found entering freely into combination with the agency of the church and of the state.

A notable paper was published some years ago by President Magoun, of Iowa College, in which the attempt was made to unravel these different agencies in the beginnings of American education.<sup>1</sup> The discussion is marred by a kind of special pleading, but it constitutes nevertheless an important contribution to our understanding of the subject, and presents a great collection of pertinent facts. Yet it may be questioned whether such an attempt can ever be altogether successful. The several agencies in question were, in fact, far less completely differentiated than they are now. We are not so much called on to trace the strands of the present back into the past, as to trace from the past down into the present the slow process by which the things which we now distinguish come to be distinct from one another.

As the Revolution drew on, great changes became manifest in colonial society. Even the more homogeneous of the colonies became widely diversified in the religious character of their population. Politics became a more absorbing concern. The spirit and ideas of democracy steadily advanced. With the success of the Revolution, there came a great wave of national spirit.

<sup>1</sup> *The source of American education—popular and religious.* The *New Englander*, Vol. XXXVI, pp. 445-486.

Men began planning a greater future for the United States than many had dreamed of before, and these plans, of necessity, took large account of the problem of public education. French influence was in the ascendancy. The doctrines of individualism and secularism were gaining ground. As the tide of emigration to the West set in, men began to plan commonwealths new from the ground up, and great schemes of public education entered into their plans, as a matter of course.

Under such conditions, men became more and more opposed to state establishments of religion. The ecclesiastical character of the colleges then in existence aroused deep-seated antagonism. The colleges were looked upon as representing the interests of a class or section of society and not of the whole people. But the love of learning was gaining ground, together with an appreciation of the value of learning to others than those of the professional class. In casting about for a way to secure a better system of higher schools, two courses seemed open — either to impose some sort of public control on the institutions then existing or to establish alongside of the older colleges new institutions controlled by the organs of the state. It is not to be supposed that definite purposes gave direction to the new movement or that it followed any sort of scheme definitely marked out from the start. But, half-blindly, men remote from one another were groping their way to the same goal, and through many devious ways were pursuing one of the two main courses pointed out above. The idea of public control pure and simple did not commend itself at once to men who had been brought up under a system of private or ecclesiastical management of schools. For a generation or more the striving after public control took for the most part the form of an effort to improve, through legislative agency, the institutions then existing. The exact relation of the state legislature to chartered institutions within the state had not yet been settled. The period was one in which this relation was slowly coming to a clear determination — in which accordingly public and private institutions were becoming fully differentiated; and the culmination of this process was reached, so far as a purely legal question was involved, in the famous Dartmouth College case.

Dartmouth College was founded through the devoted efforts of the Rev. Eleazar Wheelock, who became its first president. In 1769 it received a charter from George III. This instrument erected a close corporation to act as trustees for the college; and it conferred on President Wheelock the privilege of nominating his successor, who should remain in office until the appointment should be disapproved by the board of trustees. President Wheelock in his will named his son John as his successor. John Wheelock served the college with marked efficiency for many years. After a time serious differences arose between him and certain members of the board of trustees. These differences seem to have been at the outset theological in their character. They soon involved a large circle of those interested in the college in New Hampshire and neighboring states, many leading citizens being enlisted as partisans of either the one side or the other. President Wheelock finally appealed to the legislature for a committee of investigation, charging the trustees with religious intolerance, with violation of the charter in attacks upon the presidential office, and with other breaches of trust. The legislature voted by a large majority to appoint such a committee. The trustees then removed the president and appointed his successor. The governor of the state in a message to the legislature took grounds against the trustees; and the legislature passed an act, June 27, 1816, declaring that "the college of the state may, in the opinion of the legislature, be rendered more extensively useful," and enacting accordingly "that the corporation, heretofore called and known by the name of the Trustees of Dartmouth College, shall ever hereafter be called and known by the name of the Trustees of Dartmouth University."<sup>1</sup> The membership of the board of trustees was increased from twelve to twenty-one, the president being made a member of the board *ex officio*, and the governor and counsel being authorized to appoint in the first instance the number of

<sup>1</sup> The resemblance between some steps in this controversy and certain passages in the history of Yale College and of the University of Pennsylvania is perhaps too obvious to call for special note. The plan of organization adopted for Dartmouth University suggests at once the governing boards of Harvard College as then constituted.

trustees necessary to complete the board to the number of twenty-one. A board of overseers was also constituted, of twenty-five members, having power to inspect and confirm, or disapprove and negative, such votes and proceedings of the board of trustees as shall relate to the appointment and removal of president, professors, and other permanent officers of the university, and determine their salaries; to the establishment of colleges and professorships, and the erection of new college buildings," etc. Of this board, the president of the senate and the speaker of the house of representatives of New Hampshire, and the governor and lieutenant governor of Vermont were to be members *ex officio*. The governor and counsel of New Hampshire were authorized to appoint the remaining members of this board and to fill vacancies in the same as they should occur. It was further enacted that "perfect freedom of religious opinion shall be enjoyed by all the officers and students of the University."<sup>1</sup> The board of trustees of the college maintained that the legislature had no power of interference in their affairs, and carried the matter into the courts. The supreme court of the State of New Hampshire decided against the college. The case was then carried into the supreme court of the United States. Daniel Webster was of the counsel for the college, and his argument in this case added greatly to his fame as a constitutional lawyer. The opinion of the court was pronounced in February, 1819, by Chief Justice Marshall. The finding of the New Hampshire court was reversed. The decision was summarized in the following terms :

The charter granted by the British crown to the trustees of Dartmouth College, in New Hampshire, in the year 1769, is a contract within the meaning of that clause of the constitution of the United States (Art. 1, s. 10) which declares that no state shall make any law impairing the obligation of contracts. The charter was not dissolved by the Revolution.

An act of the State of New Hampshire altering the charter without the consent of the corporation in a material respect is an act impairing the obligation of the charter, and is unconstitutional and void.

Under its charter Dartmouth College was a private and not a public corporation. That a corporation is established for purposes of general charity,

<sup>1</sup> The original charter contained an equally liberal provision as regards students, but this provision does not seem to have included the officers of the college.

or for education generally, does not, *per se*, make it a public corporation, liable to the control of the legislature.<sup>1</sup>

This decision marks an epoch not only in American jurisprudence, but also in American education. Chancellor Kent said of it that it "did more than other single act proceeding from the authority of the United States to throw an impregnable barrier around all rights and franchises derived from the grant of government, and to give solidity and inviolability to the literary, charitable, religious, and commercial institutions of our country."<sup>2</sup> On the educational side it completed the differentiation between public and private corporations, and assigned the most of the higher schools and colleges then in existence to the latter class. It effectually checked the movement toward legislative interference with educational close corporations, and in so doing it turned the efforts looking toward public control of education into the other channel, *i. e.*, into the establishment of institutions of learning under the immediate direction of public corporations. The same number of the *North American Review* which reported the finding of the Supreme Court in the Dartmouth College case contained an article in which the newly established University of Virginia was made the text for an urgent appeal for state appropriations for higher education.

We have seen that as early as 1779 Jefferson's plan for an educational system for the State of Virginia contemplated making William and Mary College the head of that system. But this purpose was finally dropped on account of the rigidly ecclesiastical character of the college. There seems to have been at a later time a serious project to secure the greater part of the property of the college and divert it to the uses of a university. But this scheme also failed, and the outcome of more than forty years of effort looking to a worthy educational establishment for the whole state, was that the college was left stranded and decadent while the University of Virginia rose to eminence, encouraged by state support and under public control.

<sup>1</sup> 4 WHEATON 517.

<sup>2</sup> *Commentaries on American Law*, thirteenth edition, Vol. I, p. 419.

A long line of state universities followed. The clear field opened to the commonwealths of the West was especially favorable to their establishment, and the gift of public lands to each new state in turn for the establishment of seminaries of learning encouraged the builders of those states to plan large and liberal things.

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*(To be continued.)*